

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 89007-001

v

Time Insurance Company
Respondent

Issued and entered
This 13th day of May 2008
by Ken Ross
Commissioner

ORDER

I

PROCEDURAL BACKGROUND

On or about April 1, 2008, XXXXX, authorized representative of XXXXX (Petitioner), filed a request for an external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The request was incomplete, but after receiving additional information the Commissioner accepted it on April 15, 2008.

The Commissioner notified Time Insurance Company (Time) of the external review and requested the information used in making its adverse determination.

The case involves medical issues so the Commissioner assigned the matter to an independent review organization and requested the opinion of a medical expert. The IRO completed its review and sent recommendations to the Commissioner on April 28, 2008.

II

FACTUAL BACKGROUND

The Petitioner has individual health insurance coverage with Time. In August 2007 the Petitioner got a custom-made knee brace from Teter Orthotics & Prosthetics Inc. (Teter). The

charge for the brace was \$2,580.00. Time initially denied coverage for the brace in December 2007 as medically unnecessary.

The Petitioner appealed the denial through Time's internal grievance process. Time reviewed the claim but upheld its denial and issued a final adverse determination dated February 12, 2008.

III ISSUE

Was Time correct in denying coverage for the Petitioner's custom-made knee brace?

IV ANALYSIS

Petitioner's Argument

The Petitioner saw XXXXX, MD., in August 2007 complaining of bilateral knee pain that was worse on the left than the right. Dr. XXXXX diagnosed osteoarthritis of the left knee and prescribed a knee brace.

Teter cast the Petitioner for a custom-made brace for his left knee. Teter explained the reasons why a custom-made brace was furnished instead of one off the shelf: "A custom device was required due to the [Petitioner's] unique contours, abnormalities, to provide an intimate fit, and to provide the optimal function for correction."

The Petitioner believes that a custom-made brace was medically necessary and should be covered by Time.

Time Insurance Company's Argument

Time denied coverage for the custom-made knee brace on the grounds that it was not medically necessary. The Petitioner's policy defines "medically necessary" as:

Treatment that we determine:

- is appropriate and consistent with the diagnosis and is in accordance with accepted United States medical practice and federal government guidelines;

- can reasonably be expected to contribute substantially to the improvement of a condition resulting from an illness or injury;
- is not for Experimental or Investigational Services;
- is provided in the least intense setting without adversely affecting the condition or the quality of medical care provided; and
- is not primarily for the convenience of you, your family, your Health Care Practitioner, or provider.

Prescription by a Health Care Practitioner does not automatically make treatment Medically Necessary.

Time said in its final adverse determination that an off-the-shelf brace was “medically appropriate.” Time had a physician review all the information and records and based on that review it decided to uphold its initial denial. Time said in its final adverse determination:

An off the shelf brace is medically appropriate. The custom fabricated loader/unloader brace is not medically necessary. There is no evidence from the medical literature that custom fit knee brace devices offer benefit greater than off-the-shelf devices.

Time also pointed out that Dr. XXXXX, in his record of the Petitioner’s August 6, 2007, office visit, prescribed “Knee medial unloader brace: Off the shelf.”

Time believes its decision to deny coverage was correct.

Commissioner’s Review

Since this case involved a medical issue it was assigned to an independent review organization (IRO) to determine if the Petitioner required a custom-made knee brace. The IRO reviewer is certified by the American Board of Orthopedics; is a member of the American Academy of Orthopedic Surgeons, the American Medical Association, and the Eastern Orthopedic Association; and is in active practice.

The IRO reviewer said: “It is the determination of this reviewer that medical necessity has not been established for the custom-made knee brace.” The IRO reviewer explained the conclusion:

There is no information given that would preclude the use of a prefabricated

brace. In this patient, at 180 pounds and 5'11", he is probably overweight but certainly not obese. Angular deformity is not specified but it is probably mild as his treating physician recommended "an off the shelf brace." Also severe angular deformity would mitigate against the usefulness of the unloader brace in the first place. A research of the literature does not support one brace over the other.

The IRO reviewer's recommendation is based on extensive expertise and professional judgment and the Commissioner finds no reason to reject it. Therefore, the Commissioner accepts the IRO reviewer's conclusion that the medical necessity for a custom-made brace has not been established in the Petitioner's case.

V ORDER

The Commissioner upholds Time Insurance Company's final adverse determination of February 12, 2008. Time is not required to provide coverage for the Petitioner's custom-made brace.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

Ken Ross
Commissioner